

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

M & G POLYMERS USA, LLC

Complainant,

v.

**CSX TRANSPORTATION, INC. and
SOUTH CAROLINA CENTRAL RAILROAD
COMPANY**

Defendants.

Docket No. NOR 42123

228612

MOTION TO MODIFY PROCEDURAL SCHEDULE

M&G Polymers USA, LLC ("M&G") hereby submits this "Motion to Modify Procedural Schedule" in the above-captioned proceeding. M&G requests that the Board adopt the procedural schedule set forth in Exhibit A to this Motion. Counsel for defendant, CSX Transportation, Inc. ("CSXT"), has authorized counsel for TPI to represent that it does not oppose this motion. Defendant, South Carolina Central Railroad ("SCRF"), has declined to consent.

This motion is being filed simultaneous with separate motions for procedural schedules in TOTAL PETROCHEMICAL USA, Inc. v. CSX Transportation, Inc., and E.I. du Pont de Nemours and Company v. Norfolk Southern Railway, in STB Docket Nos. 42121 and 42125, respectively. Complaints in all three cases were filed within a six month period. All three dockets are complex stand-alone cost ("SAC") cases involving anywhere from 60 to 140 lanes of carload traffic. All three Complainants are represented by the same counsel and consultants, and both CSXT and Norfolk Southern are represented by the same counsel and consultants.

Therefore, careful coordination of procedural schedules is especially important to the fair and efficient prosecution of these cases. The dates in the proposed procedural schedules in all three dockets have been coordinated in order to minimize timing and resource conflicts; to provide the parties and the Board with adequate time to develop, present, and evaluate the evidence; and to produce timely decisions in these cases.¹

In a decision served on August 4, 2010, the Board previously established a procedural schedule requested by M&G and CSXT. Pursuant to that schedule, M&G's Opening Evidence is due on April 15, 2011. However, this docket is closely linked with Docket No. 42121 and also shares many of the same issues presented in a similar Motion to Modify Procedural Schedule that has been filed by TOTAL Petrochemicals USA, Inc. ("TPI") contemporaneously in that docket. Consequently, M&G also requires an extension to its procedural schedule.

As in Docket No. 42121, there is a short line defendant in this docket, the SCRF. M&G served an amended complaint on August 16, 2010 that joined SCRF as a defendant. In addition, M&G served discovery upon the SCRF contemporaneous with the amended complaint. At that time, four months remained before discovery closed in this proceeding on December 15, 2010, which was ample time for SCRF to respond to M&G's discovery requests. Instead, SCRF filed a motion to quash discovery, which is currently pending before the Board. In addition, SCRF moved to bifurcate the market dominance and rate reasonableness phases of this case. M&G cannot complete its development of SAC evidence without discovery of SCRF, and it cannot present SAC evidence without the SCRF lane. Thus, the delay caused by SCRF requires an extension to the current procedural schedule.

This situation could have been avoided, because SCRF could have extricated itself from this proceeding as far back as August 2010. Since before filing its amended complaint in

¹ For the convenience of the Board, Exhibit A sets forth the proposed procedural schedules in all three dockets.

August, a period of five months, M&G has attempted to secure a contract from SCRF. In every communication, M&G has stressed that, absent a contract, M&G would have no choice but to join SCRF in this proceeding. Although SCRF repeatedly expressed its willingness to negotiate a contract, SCRF did not get around to quoting a contract rate until December 23, 2010. The parties may be able to agree upon a contract that would allow M&G to dismiss SCRF from this case, thus removing any objection to this motion. However, because this procedural schedule is closely linked with the procedural schedules also proposed in Docket Nos. 42121 and 42125, M&G cannot defer this motion until its ability to contract with SCRF has been conclusively established.

In addition, there is substantial overlap between the stand-alone railroads ("SARR") that both TPI and M&G are developing in their cases against the same defendant, CSXT. Consequently, the issues that TPI has confronted in developing its SARR also apply to M&G. Moreover, because the larger TPI SARR overlaps most of the M&G SARR, development of M&G's SAC evidence has closely followed the development of TPI's evidence. Because TPI's procedural schedule currently precedes M&G's schedule by approximately two months, TPI's counsel and consultants have concentrated their efforts on first completing TPI's SARR and then modifying that SARR as appropriate for M&G. Consequently, the delays noted by TPI in its Motion to Modify Procedural Schedule also impact M&G's case preparation timeline. Therefore, M&G's proposed procedural schedule has been adjusted to preserve this relationship consistent with TPI's proposed procedural schedule modifications.

WHEREFORE, for the foregoing reasons, M&G respectfully requests that the Board modify the procedural schedules for Docket No. 42123 as set forth in Exhibit A to this Motion.

Respectfully submitted,



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January 10, 2011

Exhibit A
Proposed Procedural Schedules

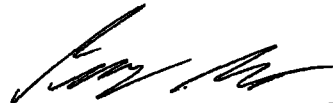
<u>Action</u>	<u>Docket No. 42121:</u> <u>TPI v. CSXT</u>	<u>Docket No. 42123:</u> <u>M&G v. CSXT</u>	<u>Docket No. 42125:</u> <u>DuPont v. NSR</u>
Shortline Railroad Discovery Objections Due	Feb. 1, 2011		
Shortline Railroad Discovery Responses Completed	March 1, 2011		
TPI Opening Evidence	April 29, 2011		
M&G/CSXT Joint Operating Characteristics Due		May 11, 2011	
M&G Opening Evidence		June 29, 2011	
DuPont Discovery Closes			June 30, 2011
CSX Reply to TPI	August 29, 2011		
DuPont/NSR Joint Operating Characteristics			Sept. 14, 2011
CSX Reply to M&G		Oct. 28, 2011	
DuPont Opening Evidence			Oct. 31, 2011
TPI Rebuttal Evidence	Dec. 20, 2011		
TPI/CSXT Briefs	Jan 31, 2012		
M&G Rebuttal Evidence		March 7, 2012	
NS Reply Evidence			March 7, 2012
M&G/CSXT Briefs		April 7, 2012	
DuPont Rebuttal Evidence			June 29, 2012
DuPont/NSR Briefs			Aug. 17, 2012

CERTIFICATE OF SERVICE

I hereby certify that this 10th day of January 2011, I served a copy of the foregoing upon CSX Transportation, Inc., and South Carolina Central Railroad Company, in the following manner and at the addresses below:

Via e-mail and first-class mail to:

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Jeffrey O. Moreno